

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1775

**Introduced by Assembly Member Furutani
(Coauthors: Assembly Members Block and Hayashi)**

February 9, 2010

An act to amend Section 37222 of the Education Code, and to add Section 6722 to the Government Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, as amended, Furutani. Public schools: Fred Korematsu Day of Civil Liberties and the Constitution.

Existing law requires the Governor to proclaim certain days each year for specified reasons. Existing law also designates particular days each year as having special significance in public schools and educational institutions and encourages those entities to conduct suitable commemorative exercises on those dates.

This bill would require the Governor annually to proclaim ~~April 19~~ *January 30* as Fred Korematsu Day of Civil Liberties and the Constitution, would designate that date of each year as having special significance in public schools and educational institutions, and would encourage those entities to observe that date by conducting exercises remembering the life of Fred Korematsu and recognizing the importance of preserving civil liberties.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature in enacting
2 this act to do all of the following:

3 (1) Declare ~~April 19~~ *January 30* the Fred Korematsu Day of
4 Civil Liberties and the Constitution.

5 (2) Emphasize the constitutional rights afforded to all Americans
6 regardless of race or ancestry, particularly the rights to due process
7 and life, liberty, and property that are guaranteed by the Fifth and
8 Fourteenth Amendments.

9 (3) Uphold the civil liberties of all citizens that are granted by
10 the United States and California Constitutions, especially in times
11 of real or perceived crisis.

12 (b) The Legislature finds and declares all of the following:

13 (1) During World War II, Fred Korematsu was arrested and
14 convicted for ~~remaining in California~~ *defying the exclusion order*
15 at a time when persons of Japanese ancestry, including United
16 States citizens, were ordered to live in concentration camps. Four
17 decades later, Korematsu's wrongful conviction was overturned
18 by Judge Marilyn Hall Patel of the United States District Court.
19 In granting Mr. Korematsu's petition for writ of error coram nobis,
20 Judge Patel acknowledged in her decision that ~~a "grave~~ *"a grave*
21 *injustice was done to American citizens and resident aliens of*
22 *Japanese ancestry who, without individual review or any probative*
23 *evidence against them, were excluded, removed and detained by*
24 *the United States during World War II."* Judge Patel further stated,
25 ~~"Korematsu~~ *"[Korematsu] stands as a caution that in times of*
26 *distress the shield of military necessity and national security must*
27 *not be used to protect governmental actions from close scrutiny*
28 *and accountability. It stands as a caution that in times of*
29 *international hostility and antagonisms our institutions, legislative,*
30 *executive, and judicial, must be prepared to exercise their authority*
31 *to protect all citizens from the petty fears and prejudices that are*
32 *so easily aroused."*

33 (2) Fred Korematsu's lifelong pursuit of justice on his own
34 behalf and for countless others is uniquely symbolic of the founding
35 ideals and traditions of our State and Nation. He remained a tireless
36 advocate for, and is an enduring symbol of, every American's right
37 to liberty, due process, and equality without regard to race,
38 ethnicity, or national origin.

1 (3) In 1942, Gordon K. Hirabayashi and Minoru Yasui also
2 defied the curfew ~~and exclusion regulations~~ imposed on United
3 States *citizens and permanent residents* of Japanese ancestry. In
4 1943, Hirabayashi and Yasui were also wrongfully convicted. ~~And~~
5 ~~as with Fred Korematsu, they too were~~ and denied justice by the
6 United States Supreme Court ~~in 1943~~.

7 (4) The Fifth Amendment and the Fourteenth Amendment of
8 our United States Constitution both guarantee a right to due
9 process. These rights were violated when Americans of Japanese
10 ancestry were denied the fundamental rights to notice of any
11 criminal charges, the right to attorneys, and the right to a trial.
12 Korematsu, Hirabayashi, and Yasui each took a principled stand
13 at great personal sacrifice in protesting government sanctioned
14 discrimination based on racial heritage and ancestry.

15 (5) Fred Korematsu was born in Oakland, California, on January
16 30, 1919, to Japanese immigrant parents. Upon graduation from
17 Castlemont High School in ~~1938~~ 1937, Fred Korematsu wanted
18 to serve his country in the military and attempted to enlist in the
19 *United States National Guard and the United States Coast Guard*,
20 but was rejected because his Selective Service classification had
21 been changed to “Enemy Alien,” even though he was a citizen of
22 the United States.

23 (6) Fred Korematsu attended the Master School of Welding and
24 worked at the docks in Oakland as a shipyard welder, quickly
25 rising through the ranks to foreman until his union barred all people
26 of Japanese ancestry and his employment was terminated. When
27 World War II broke out, Fred Korematsu suffered from acts of
28 discrimination, as he was turned away from restaurants and barber
29 shops, and denied the right to work, travel, and ultimately to reside
30 in his native State of California.

31 (7) In 1942, Fred Korematsu refused to comply with Civilian
32 Exclusion Order No. 34 which was authorized by President
33 Franklin D. Roosevelt’s Executive Order No. 9066. It imposed
34 strict curfew regulations and required over 100,000 ~~Americans~~
35 *United States citizens and permanent residents* of Japanese ancestry
36 to leave their homes on the West Coast and submit to imprisonment
37 based solely on their ancestry. Rather than reporting to the
38 assembly center with the rest of his family, Fred Korematsu chose
39 to defy the order and decided to carry on his life as an American
40 citizen and a citizen of the State of California.

(8) Fred Korematsu was arrested on May 30, 1942, and charged with violating the military's exclusion order. ~~After~~ *While* spending two and one-half months in ~~a San Francisco prison~~ *the Presidio stockade prison in San Francisco*, the Executive Director of the American Civil Liberties Union of Northern California, Ernest Besig, ~~posted bail and~~ offered to defend him. Fred Korematsu was tried and convicted by a federal court and taken by military authorities to the ~~Tanforan concentration camp~~ *Relocation Center in San Bruno, California*, where he lived in squalor. *After spending several months at Tanforan, a former horse racing track, Korematsu and his family were sent to the Topaz concentration camp in Utah.* Believing the discriminatory conviction went against freedoms guaranteed by the Constitution, Fred Korematsu appealed his case. Though the appeal went up to the United States Supreme Court in 1944, justice was denied to Fred Korematsu when the Supreme Court upheld the conviction by a six to three vote, leaving him devastated and wondering what effect this would have on other Americans.

(9) ~~Thousands~~ *Tens of thousands* of Japanese American soldiers fought in Europe, *North Africa*, and the Pacific during World War II and served with indomitable spirit and valor including those in the 442nd Infantry, *the 100th Infantry Battalion*, the 522nd Field Artillery Battalion, the Military Intelligence Service, the 232nd Combat Engineer Company, and the 1399th Engineer Construction Battalion. The 442nd Infantry of the United States Army was a combat team composed primarily of Japanese American soldiers who fought in Europe. Some members of the 442nd were recruited directly from the concentration camps, and many others had relatives that were incarcerated in the camps. ~~The~~ *Grouped together as the 442nd Regimental Combat Team, the unit* became the most decorated unit in United States military history for its size and length of service, receiving seven Presidential Unit Citations, 21 Medals of Honor, ~~29~~ 52 Distinguished Service Crosses, 560 Silver Stars, 4,000 Bronze Stars, and numerous additional distinctions.

(10) Following World War II and the release of Japanese Americans from the concentration camps, Fred Korematsu attempted to resume life as an American citizen, marrying his wife Kathryn and raising two children, Karen and Ken. He maintained his innocence through the years but the conviction had a lasting

1 impact on Fred Korematsu's basic rights, affecting his ability to
2 ~~vote and~~ obtain employment.

3 (11) In ~~January~~ of 1982, with newly discovered evidence found
4 by Peter Irons, a ~~wartime~~ *legal* historian and attorney, and Aiko
5 Yoshinaga-Herzig, a researcher, Fred Korematsu made the decision
6 to reopen his 1944 conviction by petitioning for a writ of error
7 coram nobis to have the wrongful conviction vacated. The task of
8 retrying a legal case based on events 40 years past was complicated
9 and novel, but a *pro bono* legal team composed mostly of Sansei
10 third generation Japanese Americans was determined to undo the
11 injustice perpetrated on Fred Korematsu and their own family
12 members who were imprisoned along with Korematsu. Similarly,
13 Minoru Yasui and Gordon K. Hirabayashi also petitioned for writs
14 of error coram nobis in Oregon and Washington. Fred Korematsu's
15 attorneys worked closely with the legal teams assembled for the
16 Minoru Yasui and Gordon K. Hirabayashi cases. These *pro bono*
17 teams were also composed primarily of Sansei, and together the
18 attorneys for the three cases developed the legal strategies that
19 would prove successful in defending the civil rights of Fred
20 Korematsu, Minoru Yasui, Gordon K. Hirabayashi, and all
21 Americans.

22 (12) The writ of error coram nobis has been extremely limited
23 in application but has been used by courts once an individual has
24 been convicted and released in order to correct a court's
25 fundamental error or to reverse a manifest injustice. For Fred
26 Korematsu, the fundamental errors at the Supreme Court level
27 were the suppression, alteration, and destruction of evidence by
28 United States government officials that Japanese Americans were
29 not disloyal nor were predisposed to espionage and sabotage, as
30 had been argued by the government in the Korematsu, Hirabayashi,
31 and Yasui cases, and that no facts warranted the issuance of the
32 military orders and Executive Order No. 9066. Thus, Fred
33 Korematsu's lawyers argued that a fraud on the Supreme Court
34 had been committed, resulting in Fred Korematsu's conviction.

35 (13) After litigating for ~~over one~~ *nearly a* year in the United
36 States District Court for the Northern District of California, Fred
37 Korematsu and his legal team emerged triumphant on November
38 10, 1983, when Judge Marilyn Hall Patel announced from the
39 bench her decision granting the petition for the writ of error coram

1 nobis to overturn Fred Korematsu's conviction. The written
2 decision was published on April 19, 1984.

3 (14) The decision by Judge Patel influenced petitions for writ
4 of error coram nobis in the United States District Courts of Oregon
5 and Washington, where Minoru Yasui and Gordon K. Hirabayashi
6 successfully filed to have their wrongful convictions vacated. The
7 coram nobis decisions in these cases impaired the precedent of the
8 original Supreme Court cases which validated the curfew and
9 exclusion orders. In addition, the decisions influenced Congress'
10 passage of the Civil Liberties Act of 1988.

11 (15) The Civil Liberties Act of 1988 was signed into law by
12 President Ronald Reagan and recognized the grave injustice that
13 was done to United States residents and citizens of Japanese
14 ancestry by the forced relocation and incarceration of civilians
15 during World War II. Congress acknowledged that the incarceration
16 of these Japanese Americans occurred because of racial prejudice,
17 wartime hysteria, and a failure of political leadership. The apology
18 extended on behalf of the United States was also intended to make
19 more credible and to be consistent with any expressions of concern
20 by the United States over violations of human rights committed
21 by other nations.

22 (16) ~~In January—On January 15, 1998, Fred Korematsu was~~
23 ~~awarded the Presidential Medal of Freedom. The Presidential~~
24 ~~Medal of Freedom is the highest honor bestowed upon a civilian~~
25 ~~who has made a particularly meritorious contribution to the nation's~~
26 ~~interests. That same year, Fred Korematsu also received the~~
27 ~~California Senate Medal.~~

28 (17) *On June 11, 1998, Fred Korematsu received the first*
29 *California Senate Medal.*

30 ~~(17)~~

31 (18) Fred Korematsu continued his efforts to ensure that
32 Americans do not forget the lessons learned from our own history
33 as he traveled across the country, speaking at various colleges, law
34 schools, and ~~functions~~ *other organizations*. He received honorary
35 doctorates from the University of San Francisco, *California State*
36 *University, East Bay (formerly California State University—at*
37 ~~Hayward, Hayward)~~, *McGeorge School of Law*, and the City
38 *University of New York Law School*. Fred Korematsu shared his
39 story and encouraged others to speak up when faced with injustice.

1 (19) After September 11, 2001 (9/11), Korematsu continued to
2 speak out. In 2004, he filed a petition with the United States
3 Supreme Court on behalf of Muslim inmates at Guantanamo Bay,
4 warning that the government's extreme measures were reminiscent
5 of the past.

6 ~~(18)~~

7 (20) Fred Korematsu's life was the basis for the Emmy-winning
8 ~~2002~~ award-winning 2001 Public Broadcasting Service
9 documentary "Of Civil Wrongs and Rights: The Fred Korematsu
10 Story," coproduced by Eric Paul Fournier and Fred Korematsu's
11 son, Ken Korematsu. The coram nobis cases were also the subject
12 of an Oscar nominated film, "Unfinished Business"—~~produced~~
13 ~~directed~~ by Steven Okazaki. ~~Fred Korematsu's daughter, Karen~~
14 ~~Korematsu-Haigh, helped found the Korematsu Civil Rights Fund~~
15 ~~sponsored by the Bay Area Asian Law Caucus.~~

16 ~~(19)~~

17 (21) A true civil liberties hero was lost on March 30, 2005, when
18 Fred Korematsu passed away at 86 years of age due to respiratory
19 illness in ~~Larkspur~~ San Rafael, California, leaving behind a lasting
20 influence on the importance of maintaining the constitutionally
21 mandated guarantee of liberty for all Americans.

22 ~~(20)~~

23 (22) On April 18, ~~2008~~ 2009, Seattle University School of Law
24 opened the "Fred T. Korematsu Center for Law and Equality."

25 ~~(21)~~

26 (23) On April 30, 2009, the Asian Law Caucus in San Francisco
27 officially launched the Fred T. Korematsu Institute for Civil Rights
28 and Education. *The mission of the institute is to advance pan-ethnic*
29 *civil rights issues, in a post-9/11 context, through education,*
30 *leadership development, and activism. Fred Korematsu's daughter,*
31 *Karen Korematsu-Haigh, helped found the Korematsu Institute.*
32 *She is active in advancing her father's legacy as a member of the*
33 *Institute's Steering Committee and as a speaker at universities*
34 *and organizations across the country.*

35 ~~(22)~~

36 (24) On December 15, 2009, the San Leandro School Board in
37 a unanimous decision named the new 9th grade campus, "~~San the~~
38 ~~San Leandro High School, Fred Korematsu Campus.~~" T. Korematsu
39 *Campus. In November 2005, an elementary school at Mace Ranch*
40 *in Davis, California, was renamed the Fred T. Korematsu*

1 *Elementary School at Mace Ranch. In November 2006, the*
2 *Discovery Academy elementary school in Oakland, California,*
3 *was renamed the Fred T. Korematsu Discovery Academy.*

4 (25) *In the late 1980s, two new streets in San Jose, California,*
5 *were named Korematsu Court and Hirabayashi Drive.*

6 ~~(23)~~

7 (26) Fred Korematsu's life and his willingness to assert that our
8 civil liberties are the hallmark of our great country have left an
9 indelible mark on the history of our nation and holds a special
10 meaning for the people of California.

11 SEC. 2. Section 37222 of the Education Code is amended to
12 read:

13 37222. (a) The following days in each year are designated and
14 set apart as days having special significance:

15 (1) The second Wednesday in May as the Day of the Teacher.

16 (2) April 21 of each year as John Muir Day.

17 (3) April 6 of each year as California Poppy Day.

18 (4) May 22 of each year as Harvey Milk Day.

19 (5) ~~April 19~~ January 30 of each year as Fred Korematsu Day
20 of Civil Liberties and the Constitution.

21 (b) On each of the days designated in subdivision (a), all public
22 schools and educational institutions are encouraged to observe
23 those days and to conduct suitable commemorative exercises as
24 follows:

25 (1) On the Day of the Teacher, exercises commemorating and
26 directing attention to teachers and the teaching profession.

27 (2) On John Muir Day, exercises stressing the importance that
28 an ecologically sound natural environment plays in the quality of
29 life for all of us, and emphasizing John Muir's significant
30 contributions to the fostering of that awareness and the indelible
31 mark he left on the State of California.

32 (3) On California Poppy Day, exercises honoring the California
33 Poppy, including instruction about native plants, particularly the
34 California Poppy, and the economic and aesthetic value of
35 wildflowers; promoting responsible behavior toward our natural
36 resources and a spirit of protection toward them; and emphasizing
37 the value of natural resources and conservation of natural resources.

38 (4) On Harvey Milk Day, exercises remembering the life of
39 Harvey Milk, recognizing his accomplishments, and familiarizing
40 pupils with the contributions he made to this state.

1 (5) On Fred Korematsu Day of Civil Liberties and the
2 Constitution, exercises remembering the life of Fred Korematsu
3 and recognizing the importance of preserving civil liberties, even
4 in times of real or perceived crisis.

5 (c) It is the intent of the Legislature that the exercises
6 encouraged in this section be integrated into the regular school
7 program, and be conducted by the school or institution within the
8 amount otherwise budgeted for educational programs.

9 SEC. 3. Section 6722 is added to the Government Code, to
10 read:

11 6722. The Governor annually shall proclaim ~~April 19~~ *January*
12 *30* as Fred Korematsu Day of Civil Liberties and the Constitution.